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Dated: July 24, 2003

Signature: Diane Blevins
(Diane Blevins)

Docket No.: 300622002611
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Christopher REEVES, et al.

Application No.: 09/940,316

Filed: August 27, 2001

For: POLYNUCLEOTIDES ENCODING THE *fkbA*
GENE OF THE FK-520 POLYKETIDE
SYNTHASE GENE CLUSTER

Group Art Unit: 1652

Examiner: Kathleen M. Kerr

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RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is in response to an Office Action, mailed June 10, 2003, time for response to which was initially set to expire July 10, 2003. Accordingly, a Petition for a one (1) month extension of time is included herewith, extending the time for response to August 10, 2003.

Restriction Requirement

The Examiner is requiring restriction under 35 U.S.C. §121 to one of the following inventions:

- I. Claims 1-8, drawn to isolated nucleic acids encoding an open reading frame of a gene cluster that produces FK-520 comprising a CoA ligase domain (fkbB), classified in class 536, subclass 23.2;
- II. Claim 1-8, drawn to isolated nucleic acids encoding a non-ribosomal peptide synthetase (fkbP), classified in class 536, subclass 23.2;
- III. Claim 1-8, drawn to isolated nucleic acids encoding an open reading frame of a gene cluster that produces FK-520 (fkbC), classified in class 536, subclass 23.2;
- IV. Claim 1-8, drawn to isolated nucleic acids encoding an open reading frame of a gene cluster that produces FK-520 (fkbA), classified in class 536, subclass 23.2;
- V. Claims 9-11, drawn to methods of preparing polyketides using nucleic acids encoding an open reading frame of a gene cluster that produces FK-520 comprising a CoA ligase domain (fkbB), classified in class 435, subclass 76;
- VI. Claims 9-11, drawn to methods of preparing polyketides using nucleic acids encoding a non-ribosomal peptide synthetase (fkbP), classified in class 435, subclass 76;
- VII. Claims 9-11, drawn to methods of preparing polyketides using nucleic acids encoding an open reading frame of a gene cluster that produces FK-520 (fkbC), classified in class 435, subclass 76;

- VIII. Claims 9-11, drawn to methods of preparing polyketides using nucleic acids encoding an open reading frame of a gene cluster that produces FK-520 (fkfA), classified in class 435, subclass 76;
- IX. Claims 12-16, drawn to host cells expressing PKSs of FK-520, classified in class 435, subclass 252.35;
- X. Claims 12-16, drawn to host cells expressing PKSs of FK-506, classified in class 435, subclass 252.35;
- XI. Claim 17, drawn to host cells comprising recombinant genes encoding enzymes to synthesize ethylmalonyl CoA or 2-hydroxymalonyl CoA, classified in class 435, subclass 252.35; and
- XII. Claims 18-20, drawn to polyketides, classified in class 568, subclass 382.

The Examiner states that the inventions are distinct, each from each other, for the reasons set forth in the Office Action.

Applicant respectfully requests clarification regarding the statement made by the Examiner at lines 11-16 of item 2 on page 2 of the Detailed Action. Applicant is confused regarding the phrase in parentheses “(see M.P.E.P. § The specification is objected to for being confusing with respect Appropriate correction is required. 803.02).” Applicant believes that the inclusion of this phrase was a clerical error, but would appreciate confirmation of this from the Examiner.

Applicant’s hereby elect Group XII (claims 18-20), without traverse.

Applicant expressly reserves the right under 35 U.S.C. § 121 to file a divisional application directed to the non-elected subject matter during the pendency of this application, or an application claiming priority from this application.

Applicant requests examination of the elected subject matter on the merits.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 300622002611. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: July 24, 2003

Respectfully submitted,

By Brenda J. Wallach

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